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7 UNITED STATES OF AMERICA,
8 Plaintiff,
9 v.
10 SATTAR QURAISH,
11 Defendant.

Case No. [3:19-cr-00658-JD-1](#)

ORDER RE DISMISSAL

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13 On the eve of a jury trial, the government filed a motion to dismiss without prejudice the
14 indictment and superseding indictment against defendant Quraish charging him with possession
15 with intent to distribute cocaine and heroin within 1000 feet of a school. Dkt. No. 78. In response
16 to the Court's inquiries at a hearing on the motion, the government said that it had been wrong
17 about the quantity of drugs it attributed to Quraish, and that the amount was not enough to sustain
18 a possession for distribution charge. Dkt. No. 81; *see also* Dkt. No. 84-2. The Court directed the
19 parties to file briefs on whether dismissal should be with prejudice *vel non*. *See* Dkt. No. 81.

20 The Court requested the briefs because a dismissal without prejudice seemed unfair. The
21 charges against Quraish have been pending since early December 2019, and it is troubling that the
22 government did not determine it that it didn't have a case against him until three court days before
23 trial in November 2020. Accusing an individual of a serious federal crime and letting that
24 accusation dangle for almost one year before assessing the sufficiency of the evidence was
25 negligent. Defendant suggests that the prosecutors acted in bad faith or with flagrant misbehavior,
26 which is required for a dismissal with prejudice. *See United States v. Chapman*, 524 F.3d 1073,
27 1085 (9th Cir. 2008); *United States v. Hayden*, 860 F.2d 1483, 1487 (9th Cir. 1988). Although the
28 Court is not prepared to go that far because the record points to misfeasance more than

1 malfeasance, many of defendant's observations about the prosecutors' defaults are well taken.

2 The indictments are dismissed without prejudice. The United States Attorney is directed to
3 promptly advise the Court if defendant is charged again for the conduct that was the basis of the
4 indictments here.

5 **IT IS SO ORDERED.**

6 Dated: November 13, 2020

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9 JAMES DONATO
10 United States District Judge
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